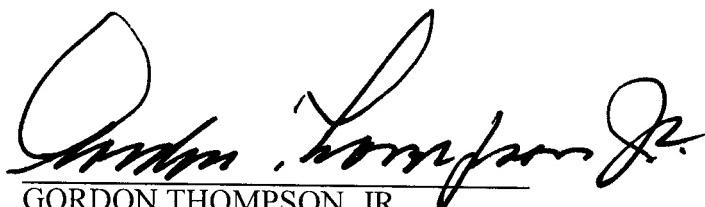


1 First, Mr. Garcia pled guilty, pursuant to a written plea agreement, to three counts of illegal
2 entry by an alien, in violation of 8 U.S.C. § 1325. In the written plea agreement, Mr. Garcia
3 explicitly waived his right to appeal and/or collaterally attack his conviction or sentence. The
4 Ninth Circuit has long acknowledged that the terms of a plea agreement are enforceable. *See,*
5 United States v. Baramdyka, 95 F.3d 840, 843 (9th Cir. 1996), *cert. denied*, 117 S.Ct. 1282 (1997).
6 Since Mr. Garcia expressly waived his statutory right to appeal or collaterally attack his sentence
7 in his plea agreement, Mr. Garcia is now precluded from challenging that sentence pursuant to 28
8 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993) (holding that
9 a knowing and voluntary waiver of a statutory right is enforceable).

10 Moreover, even if Mr. Garcia had not expressly waived his right to appeal or collaterally
11 attack his sentence, his petition would still fail. Essentially, Mr. Garcia argues that since he did
12 not agree to a 54 month sentence, the Court was precluded from sentencing him to the 54
13 months that he received. However, the written plea agreement specifically states that “the
14 sentence is within the sole discretion of the sentencing judge.” (Plea agreement, para. 10).
15 Hence, the imposition of a 54 month sentence did not violate Mr. Garcia’s plea agreement.
16 Accordingly,

17 **IT IS ORDERED** that Petitioner’s Motion to Vacate, Set Aside or Correct Sentence is
18 **DENIED**.

19
20 Dec. 16, 2009
21 date

22 
23 GORDON THOMPSON, JR.
24 United States District Judge

25
26 cc: AUSA Bruce Castetter
27
28